

Value-Based Purchasing for Traditional Medicare

Crafting A Legal Framework

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Value-Based Purchasing

- An important new theme for health policy.
“Price is what you pay. Value is what you get”
- Value initiatives: (1) effectiveness (what?); (2) quality (who?); (3) payment (how much?)
- Foundations: P4P, PQRI, DM, DME, A+B+D (Rx) database, CMS quality reports for consumers, NQF & QASC, HIT-EHRs, learning healthcare system (Health Affairs, IOM), H.R. 3162, CBO & MedPac reports, Medicaid (MITA)

Tim Jost's Paper

- Well-written & useful overview of legal constraints on implementing Casalino proposals
- Key take-aways/briefing points:
 - Lots of demo authority
 - Major payment changes will require Congress
 - Process is very important
 - Green light & open highway on quality measures w/ consumer reporting

Tim Jost's Paper

- Possible development areas:
 - Administrative Procedures Act (1946):
 - Time-consuming requirements
 - Legal issues in contracting vs program regulations, e.g. ACOs
 - Negotiated rule-making
 - Flexibility to expand from demos to national implementation (chronic care, DME)
 - Anti-trust issues in public & private payers collaborating on value-based purchasing strategies

Non-judicial Limits on Legal Discretion

- Executive branch: HHS, OMB
 - OMB: regulation review, budget neutrality
 - Need shared objectives & policies
- Legislative branch:
 - Often a highly effective way to take-back or block Medicare discretion (HMOs, DME)
 - Need shared objectives & policies

Non-judicial Limits on Legal Discretion

- Legislative branch:
 - Necessity for evidence-based, objective, widely-accepted, measured criteria, due process for decisions, consumer information/choice
 - Oversight: MedPac, CBO, GAO; many committees
 - Develop Medicare initiatives as part of a national quality measurement framework and national comparative effectiveness initiative, with broad professional, scientific, and public support.